IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WA.No. 704 of 2007()

AGAINST THE JUDGEMENT/ORDER IN WPC.8359/2007 Dated 13/03/2007
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APPELLANT: APPELLANT/PETITIONER

M/S.SOUTHERN INVESTMENTS PVT.LTD,
HHYS BUILDING,IST FLOOR,RAJAJI ROAD,KOCHI 682 018,
REPRESENTED BY ITS DIRECTOR OPERATIONS,JACOB CHANDY.

BY ADV. SRI.BECHU KURIAN THOMAS
SRI.NAVEEN SHERRY LUKOSE

RESPONDENTS: RESPONDENTS/RESPONDENTS
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1. STATE OF KERALA REPRESENTED BY THE SECRETARY,DEPARTMENT OF REVENUE,SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,ERNAKULAM.

3. THE TAHSILDAR,KANAYANOOR TALUK,KOCHI-11.

BY GOVT.PLEADER SRI.MATHEW GEORGE VADAKKEL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.A.NO.704 OF 2007 ()

Dated this the 19th day of March, 2007

J U D G M E N T

KOSHY,J.

Appellant petitioner is a private limited company engaged in the business of developing and construction of flat complexes. According to the appellant he was granted a permission to construct a building in 95.093 cents in Sy.No.127/1, of Ernakulam Village n Kanayanoor Taluk (Ext.P1). As mentioned above, the scheme of development, undivided shares in ownership in the land was sold to 84 individuals, all of whom engaged the appellant to construct their apartment at their own cost under the common design and scheme developed by the appellant. In all, 84 number of apartments, which are separate units, independent to each other with separate access, separate electricity connection coming within the purview of Section 2 (f) of the Building Tax Act were constructed by the appellant for the respective owners. It is his

case that he is only a contractor for construction of flat complexes. Each flat owner is the owner of the building and proposed land. It is not the case that he sold the flat after construction of the building. It is his case that after completion of the building each owner of the flats filed returns for assessment under Building Tax Act. Ext.P3 is the construction agreement. Each flat is separately assessed by the Corporation of Cochin for the purpose of property tax.

2. Appellant was issued with Ext.P7 assessment notice dated 29.12.2006. In the assessment notice it is stated that earlier a notice was issued on 18.11.2006 and no reply was received. It is further stated that the entire buildings was treated as one unit and assessment will be made under the Building Tax Act. It is the contention of the petitioner that he is only the builder and there are separate units in the building and all the independent owners has filed returns and all the documents are with the concerned owners and he received Ext.P7 notice on 6.1.2007. Since he has to collect the required documents from the owners he requested for some time by Ext.P8. He also stated that he did not receive notice dated

29.12.2006 as prescribed in Ext.P7. No reply was given against Ext.P8 request and in violation of principles of natural justice Ext.P9 order was issued without granting a hearing time. Whether the building in question should be assessed as a single unit on the builder or as different units on the owners etc. are to be decided after considering the documents and hearing. According to the petitioner he is entitled to the benefit of the decision of this Court in ***Lissy v. Tahsildar (2000 (3) K.L.T. 497).*** Appeal filed from the above decision was dismissed by Hon'ble Apex Court. The said decision is followed in many cases. According to him, if he was given a chance he would have been able to convey the authority that the construction of several flats cannot be considered as a single unit. Building was completed in 2000 and returns were filed by the owners of the individual flats.

3. We dispose of the case on the question of violation of principles of natural justice. Since Ext.P9 is not a speaking order after considering the contentions, in the absence of materials, we are not considering the merits of the case. In Ext.P7 notice no date of hearing is shown. Appellant's

application for time to file objection was not rejected also. The learned Single Judge directed to file an appeal. Admittedly impugned order was passed and without considering the documents and without granting an opportunity for hearing and it is not a speaking order. While passing order, assessing authority has to comply with Section 7 (3) and 9 of the Kerala Building Act. The remedy of an appeal is only maintainable on payment of the assessed amount as prescribed under the proviso to Section 11. Relegating the appellant to the statutory remedy of an appeal, which would entail payment of the amount of tax assessed which comes to a huge amount will prejudice the appellant. Total violation of principles of natural justice gives the root of the matter. In the above circumstances, Ext.P9 order is quashed as it is passed on violation of principles of natural justice. But we are not postponing the matter indefinitely as it is contended by the State that State revenue is involved. It is for the appellant to produce the documents returned by him and file objection, if any, within one week from today. Assessing authority should grant a hearing on 29.3.2007 at 11 a.m. and after considering the documents produced by the petitioner as well as the legal

points, a speaking order should be passed by the assessing authority. Petitioner need not be given a further notice to appear on 29.3.2007 and he is directed to take notice. Assessing authority shall pass a speaking order considering all the relevant grounds taken in the objection by the appellant. If assessing authority is not free on 29.3.2007 he can postpone the case but appellant shall not seek for adjournment on 29.3.2007 if assessing authority is free to hear the matter. With the above directions this writ appeal is disposed of.

Issue copy urgently.

J.B.KOSHY, JUDGE

T.R.RAMACHANDRAN NAIR, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

O.P.NO. OF 2006 ()

J U D G M E N T

1th January, 2007